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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,448	07/26/2001	Charles L. Wilson	0145.00	4447
25295	7590	10/03/2005	EXAMINER	
USDA, ARS, OTT 5601 SUNNYSIDE AVE RM 4-1159 BELTSVILLE, MD 20705-5131			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/912,448	WILSON ET AL.
Examiner	Art Unit	
Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 20 December 2004 and 29 April 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 3-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 3-21 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

Claims 21 and 3 –20 are rejected under 35USC112, first paragraph. The phrase “not inhibitory” is still seen to be New Matter and not supported by the disclosure. This term has not been defined, so that it is not clear to what degree a composition would have to “inhibit”. Also, the phrase is not clear as to what is being inhibited and under what conditions the “inhibiting” is being measured against and in the amounts of product. For example, a dilute solution per carrier could be more “inhibitory” in a larger amount per weight of product to be treated. Also, although in applicants remarks filed 12/20/04, a further explanation in support of the recited ranges are given, the remarks are not seen to clearly point out the support for the overall range as recited.

Claims 21 and 3-20 are rejected under 35USC103(a) as being unpatentable over Takahashi ('727) in view of Atsumi et al (JP '509), Ozawa (JP 10-195,766) and Packpia (1966, vol. 40, n.1 pp.132-138) for the reasons fully and clearly detailed in the Office actions mailed 6/12/04, 12/4/02, and 8/26/03.

With the elimination of the word “preferably” in claim 21, claim 21 now recites that the salt and essential oil are present in a positive, specific range. Takahashi discloses a concentration within the recited range (e.g. .1% vol.) and states that they can be mixed at any ratio. Note, too, that Takahashi discloses that the two ingredients can be varied suitably depending on how it is to be used and the dosage form. See, in this regard, col. 5, para. 6.

All of applicant's remarks filed 12/20/04 have been fully and carefully considered but are not found to be convincing. Applicant has attempted to define a term after the fact, if you will. The specification as originally filed does not define what is

meant by "not inhibitory" – either in degree of inhibition, what is being inhibited, and under what conditions this inhibiting takes place. One cannot impart a definition to a term, after the application has been filed, if the specification does not necessarily and inherently support the definition. As noted above, the phrase is not supported by a clear definition in the specification, so that it is non-enabling. It is further urged, in the response, that the prior art does not teach or suggest the claim limitations. This urging is not convincing. Takahashi discloses broad ranges of concentration of the components, which ranges appear to fall within the recited range. Since the recited ranges appear to overlap with those of Takahashi, then the ranges of Takahashi inherently meet the phrasing in question (i.e. "not inhibitory"). However, as noted above and previously, this phrasing is unclear and is readable on varying degrees of effectiveness of the components such as: not inhibitory, relative to their combination together. Further, even if the ranges did not overlap, Takahashi discloses that combining the components impart a synergistic result, and taken with the art taken as a whole, including Atsumi who applicant admits also discloses synergistic results with the combined ingredients, would fairly lead one of ordinary skill in the art, through routine experimentation, to determine all ranges of synergism. It is noted that applicant apparently has obtained a translation of Atsumi. If applicant continues prosecution of this application, by filing a response, applicant is asked to submit a copy of the translation for the record. On page 16 of the response, it is urged that Takahashi uses the term "synergic" which the Webster's English Dictionary defines as working together, co-operating. Therefore, the response concludes that Takahashi does not teach a

synergistic effect. This urging is totally unconvincing. Takahashi, in col.3, para.3, uses the term "synergy effect" when referring to the result of the combination, which the American Heritage Dictionary defines as synergism which in turn is defined as the action of two or more substances, organs, or organisms to achieve an effect of which each is individually incapable, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761